

Private Letter Ruling: Private Letter Ruling IT 95-0173 revoked. Losses incurred in years for which the statute of limitations for refund claims has expired may be generally be adjusted as necessary for proper computation of net loss carryforwards to open years.

July 30, 1999

Dear:

Please find enclosed for your reference a copy of a letter from the Department of Revenue dated November 28, 1995, written to you as representative of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx The letter was indexed under the Illinois Department of Revenue Sunshine Act as Letter Ruling IT 95-0173.

That letter states that your client was not allowed to increase the deductions claimed on its 1989, 1990 and 1991 Illinois income tax returns for net losses incurred in 1985, 1986 and 1987 beyond the amount of the losses originally reported in its returns for the loss years. The rationale stated in the ruling was that the statute of limitations for the loss years had expired.

Please be advised that this ruling was incorrect. Section 911 of the Illinois Income Tax Act (35 ILCS 5/911) requires a claim for refund with respect to a tax year to be filed prior to the time the various limitations periods in that section have expired. Section 911(a)(2) prohibits the allowance of a credit or the payment of a refund unless a timely refund claim has been filed. Nothing in this statute prohibits the correction of any erroneous item on a return for a tax year or the filing of an amended return to make such a correction after the period for filing a refund claim for that year has expired.

Similarly, the statute of limitations for refunds contained in Section 6511 of the Internal Revenue Code requires filing of refund claims within specified periods and prohibits the payment of refunds on claims filed after those periods have expired. The federal courts have construed that section to allow the correction of erroneous items in tax years even after the period for filing refund claims has expired, if correction of those items is necessary to compute the proper tax liability in an open year. See, e.g., *Springfield Street Railway Co. v. United States*, 312 F.2d 754 (Ct. Cl. 1963).

Accordingly, Section 911 of the Illinois Income Tax Act does not bar your client from correcting any items erroneously reported on its 1985, 1986 or 1987 returns in order to properly compute its Illinois income tax liability in an open year. Letter Ruling IT 95-173 is therefore revoked.

Please contact me so that we can begin the process of determining the proper amount of any refunds or credits your client may be entitled to receive after revocation of the erroneous ruling.

Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax